

Requested by Representative HOYLE

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4130**

1 On page 1 of the printed bill, line 3, delete “171.427, 192.018, 192.105,”.  
2 Delete lines 6 through 22 and delete pages 2 through 8 and insert:

3

4

**“PUBLIC RECORDS PRODUCTION**

5

6 **“SECTION 1.** ORS 192.440 is amended to read:

7 “192.440. (1) The custodian of any public record that a person has a right  
8 to inspect shall give the person, upon request:

9 “(a) A copy of the public record if the public record is of a nature per-  
10 mitting copying; or

11 “(b) A reasonable opportunity to inspect or copy the public record.

12 “(2) If a person makes a written request to inspect a public record or to  
13 receive a copy of a public record, the public body receiving the request shall  
14 respond [*as soon as practicable and without unreasonable delay*] **within five**  
15 **business days of receipt of the request by a person identified by the**  
16 **public body in subsection (8)(a) of this section.** The public body may re-  
17 quest additional information or clarification from the requester for the pur-  
18 pose of expediting the public body’s response to the request. The response  
19 of the public body **must be in a standard form**, must acknowledge receipt  
20 of the request and must include one of the following:

21 “(a) A statement that the public body does not possess, or is not the

1 custodian of, the public record.

2 “(b) Copies of all requested public records for which the public body does  
3 not claim an exemption from disclosure under ORS 192.410 to 192.505.

4 “(c) A statement that the public body is the custodian of at least some  
5 of the requested public records, an estimate of the time the public body re-  
6 quires before the public records may be inspected or copies of the records  
7 will be provided and an estimate of the fees that the requester must pay  
8 under subsection [(4)] (5) of this section as a condition of receiving the  
9 public records.

10 “(d) A statement that the public body is the custodian of at least some  
11 of the requested public records and that an estimate of the time and fees for  
12 disclosure of the public records will be provided by the public body within  
13 a reasonable time.

14 “(e) A statement that the public body is uncertain whether the public  
15 body possesses the public record and that the public body will search for the  
16 record and make an appropriate response as soon as practicable.

17 “(f) A statement that state or federal law prohibits the public body from  
18 acknowledging whether the record exists or that acknowledging whether the  
19 record exists would result in the loss of federal benefits or other sanction.  
20 A statement under this paragraph must include a citation to the state or  
21 federal law relied upon by the public body.

22 “(3) A public body must within 30 days of receipt of the request by  
23 a person identified by the public body under subsection (8)(a) of this  
24 section:

25 “(a) Produce all requested public records within the possession or  
26 custody of the public body;

27 “(b) Claim an exemption from disclosure under ORS 192.410 to  
28 192.505 with respect to requested records and explain with specificity  
29 the reason the exemption applies to the requested records; or

30 “(c) State that the public body is still gathering the requested re-

1 **ords and provide an estimated date when the requested records will**  
2 **be ready for inspection or delivery to the requester, or when the public**  
3 **body will be able to claim an exemption from disclosure of the re-**  
4 **quested records.**

5 “[3] (4) If the public record is maintained in a machine readable or  
6 electronic form, the custodian shall provide a copy of the public record in  
7 the form requested, if available. If the public record is not available in the  
8 form requested, the custodian shall make the public record available in the  
9 form in which the custodian maintains the public record.

10 “[4)(a)] (5)(a) The public body may establish fees reasonably calculated  
11 to reimburse the public body for the public body’s actual cost of making  
12 public records available, including costs for summarizing, compiling or tai-  
13 loring the public records, either in organization or media, to meet the  
14 person’s request.

15 “(b) The public body may include in a fee established under paragraph (a)  
16 of this subsection the cost of time spent by an attorney for the public body  
17 in reviewing the public records, redacting material from the public records  
18 or segregating the public records into exempt and nonexempt records. The  
19 public body may not include in a fee established under paragraph (a) of this  
20 subsection the cost of time spent by an attorney for the public body in de-  
21 termining the application of the provisions of ORS 192.410 to 192.505.

22 **“(c)(A) Notwithstanding paragraph (a) of this subsection, a public**  
23 **body with 10 or more full-time equivalent employees may not establish**  
24 **fees under this subsection in which a component of the fee is the time**  
25 **of staff engaged in responding to the request that is calculated at more**  
26 **than \$30 per hour.**

27 **“(B) Notwithstanding subparagraph (A) of this paragraph but sub-**  
28 **ject to paragraph (b) of this subsection, a public body with 10 or more**  
29 **full-time equivalent employees may establish fees in excess of \$30 per**  
30 **hour to recoup costs incurred by the public body for necessary use of**

1 **attorneys or others with specialized knowledge in responding to a re-**  
2 **quest.**

3 “[*(c)*] **(d)** The public body may not establish a fee greater than \$25 under  
4 this section unless the public body first provides the requestor with a written  
5 notification of the estimated amount of the fee and the requestor confirms  
6 that the requestor wants the public body to proceed with making the public  
7 record available. **Any period of time after the public body has supplied**  
8 **a written estimate to a requester and before the requester confirms**  
9 **the requester’s interest in proceeding with the request is not taken**  
10 **into account in determining the public body’s compliance with dead-**  
11 **lines established under subsection (3) of this section.**

12 “[*(d)*] **(e)** Notwithstanding paragraphs (a) to [*(c)*] **(d)** of this subsection,  
13 when the public records are those filed with the Secretary of State under  
14 ORS chapter 79 or ORS 80.100 to 80.130, the fees for furnishing copies, sum-  
15 maries or compilations of the public records are those established by the  
16 Secretary of State by rule, under ORS chapter 79 or ORS 80.100 to 80.130.

17 **“(f) Paragraph (c) of this subsection does not apply if federal law,**  
18 **the Oregon Constitution or fiduciary obligations require a public body**  
19 **to recoup all costs incurred in responding to a request.**

20 “[*(5)*] **(6)** The custodian of any public record may furnish copies without  
21 charge or at a substantially reduced fee if the custodian determines that the  
22 waiver or reduction of fees is in the public interest because making the re-  
23 cord available primarily benefits the general public.

24 “[*(6)*] **(7)** A person who believes that there has been an unreasonable de-  
25 nial of a fee waiver or fee reduction may petition the Attorney General or  
26 the district attorney in the same manner as a person petitions when in-  
27 spection of a public record is denied under ORS 192.410 to 192.505. The At-  
28 torney General, the district attorney and the court have the same authority  
29 in instances when a fee waiver or reduction is denied as it has when in-  
30 spection of a public record is denied.

1        “[7] (8) A public body shall make available to the public a written pro-  
2 cedure for making public record requests that includes:

3        “(a) The name of one or more persons to whom public record requests  
4 may be sent, with addresses; and

5        “(b) The amounts of and the manner of calculating fees that the public  
6 body charges for responding to requests for public records.

7        “[8] (9) This section does not apply to signatures of individuals submit-  
8 ted under ORS chapter 247 for purposes of registering to vote as provided in  
9 ORS 247.973.

10        **“(10) The deadlines established in subsections (2) and (3) of this  
11 section:**

12        **“(a) In the case of a school district, education service district,  
13 community college district, community college service district or  
14 public university in this state, do not apply for periods that students  
15 of a school of the respective district or university are not attending  
16 class; and**

17        **“(b) Do not apply to any public body that does not have at least one  
18 full-time equivalent employee.**

19        **“SECTION 2.** ORS 192.450 is amended to read:

20        “192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any  
21 person denied the right to inspect or to receive a copy of any public record  
22 of a state agency, **or who has not received copies of requested records  
23 or an opportunity to inspect requested records by the date prescribed  
24 in ORS 192.440 (3),** may petition the Attorney General to review the public  
25 record to determine if it may be withheld from public inspection **or to de-  
26 termine if the agency is being unreasonably slow in responding to the  
27 request.** Except as provided in subsection (5) of this section, the burden is  
28 on the agency to sustain its action. Except as provided in subsection (5) of  
29 this section, the Attorney General shall issue an order denying or granting  
30 the petition, or denying it in part and granting it in part, within seven days

1 from the day the Attorney General receives the petition.

2 “(2) If the Attorney General grants the petition and orders the state  
3 agency to disclose the record, or if the Attorney General grants the petition  
4 in part and orders the state agency to disclose a portion of the record, the  
5 state agency shall comply with the order in full within seven days after is-  
6 suance of the order, unless within the seven-day period it issues a notice of  
7 its intention to institute proceedings for injunctive or declaratory relief in  
8 the Circuit Court for Marion County or, as provided in subsection (6) of this  
9 section, in the circuit court of the county where the record is held. Copies  
10 of the notice shall be sent to the Attorney General and by certified mail to  
11 the petitioner at the address shown on the petition. The state agency shall  
12 institute the proceedings within seven days after it issues its notice of in-  
13 tention to do so. If the Attorney General denies the petition in whole or in  
14 part, or if the state agency continues to withhold the record or a part of it  
15 notwithstanding an order to disclose by the Attorney General, the person  
16 seeking disclosure may institute such proceedings.

17 “(3) The Attorney General shall serve as counsel for the state agency in  
18 a suit filed under subsection (2) of this section if the suit arises out of a  
19 determination by the Attorney General that the public record should not be  
20 disclosed, or that a part of the public record should not be disclosed if the  
21 state agency has fully complied with the order of the Attorney General re-  
22 quiring disclosure of another part or parts of the public record, and in no  
23 other case. In any case in which the Attorney General is prohibited from  
24 serving as counsel for the state agency, the agency may retain special  
25 counsel.

26 “(4) A person denied the right to inspect or to receive a copy of any  
27 public record of a health professional regulatory board, as defined in ORS  
28 676.160, that contains information concerning a licensee or applicant, and  
29 petitioning the Attorney General to review the public record shall, on or  
30 before the date of filing the petition with the Attorney General, send a copy

1 of the petition by first class mail to the health professional regulatory board.  
2 Not more than 48 hours after the board receives a copy of the petition, the  
3 board shall send a copy of the petition by first class mail to the licensee or  
4 applicant who is the subject of any record for which disclosure is sought.  
5 When sending a copy of the petition to the licensee or applicant, the board  
6 shall include a notice informing the licensee or applicant that a written re-  
7 sponse by the licensee or applicant may be filed with the Attorney General  
8 not later than seven days after the date that the notice was sent by the  
9 board. Immediately upon receipt of any written response from the licensee  
10 or applicant, the Attorney General shall send a copy of the response to the  
11 petitioner by first class mail.

12 “(5) The person seeking disclosure of a public record of a health profes-  
13 sional regulatory board, as defined in ORS 676.160, that is confidential or  
14 exempt from disclosure under ORS 676.165 or 676.175, shall have the burden  
15 of demonstrating to the Attorney General by clear and convincing evidence  
16 that the public interest in disclosure outweighs other interests in  
17 nondisclosure, including but not limited to the public interest in  
18 nondisclosure. The Attorney General shall issue an order denying or grant-  
19 ing the petition, or denying or granting it in part, not later than the 15th  
20 day following the day that the Attorney General receives the petition. A  
21 copy of the Attorney General’s order granting a petition or part of a petition  
22 shall be served by first class mail on the health professional regulatory  
23 board, the petitioner and the licensee or applicant who is the subject of any  
24 record ordered to be disclosed. The health professional regulatory board shall  
25 not disclose any record prior to the seventh day following the service of the  
26 Attorney General’s order on a licensee or applicant entitled to receive notice  
27 under this subsection.

28 “(6) If the Attorney General grants or denies the petition for a record of  
29 a health professional regulatory board, as defined in ORS 676.160, that con-  
30 tains information concerning a licensee or applicant, the board, a person

1 denied the right to inspect or receive a copy of the record or the licensee  
2 or applicant who is the subject of the record may institute proceedings for  
3 injunctive or declaratory relief in the circuit court for the county where the  
4 public record is held. The party seeking disclosure of the record shall have  
5 the burden of demonstrating by clear and convincing evidence that the public  
6 interest in disclosure outweighs other interests in nondisclosure, including  
7 but not limited to the public interest in nondisclosure.

8 “(7) The Attorney General may comply with a request of a health profes-  
9 sional regulatory board to be represented by independent counsel in any  
10 proceeding under subsection (6) of this section.

11 **“SECTION 3.** ORS 192.460 is amended to read:

12 “192.460. (1) ORS 192.450 applies to the case of a person denied the right  
13 to inspect or to receive a copy of any public record of a public body other  
14 than a state agency **or when a public body is being unreasonably slow**  
15 **in responding to the request**, except that:

16 “(a) The district attorney of the county in which the public body is lo-  
17 cated, or if it is located in more than one county the district attorney of the  
18 county in which the administrative offices of the public body are located,  
19 shall carry out the functions of the Attorney General;

20 “(b) Any suit filed must be filed in the circuit court for the county de-  
21 scribed in paragraph (a) of this subsection; and

22 “(c) The district attorney may not serve as counsel for the public body,  
23 in the cases permitted under ORS 192.450 (3), unless the district attorney  
24 ordinarily serves as counsel for the public body.

25 “(2) Disclosure of a record to the district attorney in compliance with  
26 subsection (1) of this section does not waive any privilege or claim of privi-  
27 lege regarding the record or its contents.

28 “(3) Disclosure of a record or part of a record as ordered by the district  
29 attorney is a compelled disclosure for purposes of ORS 40.285.

30 **“SECTION 4.** ORS 192.465 is amended to read:



1 “192.465. (1) The failure of the Attorney General or district attorney to  
2 issue an order under ORS 192.450 or 192.460 denying, granting, or denying  
3 in part and granting in part, a petition to require disclosure within seven  
4 days from the day of receipt of the petition shall be treated as an order de-  
5 nying the petition for the purpose of determining whether a person may in-  
6 stitute proceedings for injunctive or declaratory relief under ORS 192.450 or  
7 192.460.

8 “(2) The failure of an elected official to [*deny, grant, or deny in part and*  
9 *grant in part a request to inspect or receive a copy of a public record within*  
10 *seven days from the day of receipt of the request*] **issue a response described**  
11 **in ORS 192.440 (2) by the date prescribed in ORS 192.440 (2)** shall be  
12 treated as a denial of the request for the purpose of determining whether a  
13 person may institute proceedings for injunctive or declaratory relief under  
14 ORS 192.450 or 192.460.

15 “(3) **The failure of an elected official to provide a requester with**  
16 **copies of requested records or an opportunity to inspect requested re-**  
17 **ords by the date prescribed in ORS 192.440 (3) shall be treated as a**  
18 **denial of the request for the purpose of determining whether a person**  
19 **may institute proceedings for injunctive or declaratory relief under**  
20 **ORS 192.450 or 192.460.**

21

22 “NOTICE OF LOCAL INITIATIVES

23

24 “**SECTION 5. Section 6 of this 2016 Act is added to and made a part**  
25 **of ORS chapter 250.**

26 “**SECTION 6. (1) Upon receiving a prospective petition for an initi-**  
27 **ative measure:**

28 “(a) **Under ORS 250.165, the county clerk shall provide notice to the**  
29 **Secretary of State of the prospective petition for an initiative measure.**

30 “(b) **Under ORS 250.265, the city elections officer shall provide no-**

1 tice to the Secretary of State of the prospective petition for an initi-  
2 ative measure.

3 “(2) Upon receipt of notice of a prospective petition for an initiative  
4 measure under subsection (1) of this section, the Secretary of State  
5 shall provide reasonable statewide notice of the prospective petition  
6 for an initiative measure.

7 “(3) Upon determining whether a prospective petition for an initi-  
8 ative measure:

9 “(a) Meets the requirements of Article IV, section 1 (2)(d), and Ar-  
10 ticle VI, section 10, of the Oregon Constitution, the county clerk shall  
11 provide notice to the Secretary of State of the clerk’s determination.

12 “(b) Meets the requirements of Article IV, section 1 (2)(d) and (5),  
13 of the Oregon Constitution, the city elections officer shall provide  
14 notice to the Secretary of State of the elections officer’s determi-  
15 nation.

16 “(4) The Secretary of State shall provide reasonable statewide notice  
17 of determinations made under subsection (3) of this section.

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19

#### “APPROPRIATION

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21 “SECTION 7. In addition to and not in lieu of any other appropri-  
22 ation, there is appropriated to the Secretary of State, for the biennium  
23 ending June 30, 2017, out of the General Fund, the amount of \$\_\_\_\_\_

24 for the purpose of implementing the provisions of section 6 of this 2016  
25 Act.

26

27

#### “CONFORMING AMENDMENTS

28

29 “SECTION 8. ORS 147.421 is amended to read:

30 “147.421. (1) If a public body is the custodian of any of the following in-

1 formation, upon the request of the victim, the public body shall provide to  
2 the victim any of the following information of which it is the custodian and  
3 that is about the defendant or convicted criminal:

4 “(a) The conviction and sentence;

5 “(b) Criminal history;

6 “(c) Imprisonment; and

7 “(d) Future release from physical custody.

8 “(2) A public body, in its discretion, may provide the requested informa-  
9 tion by furnishing the victim with copies of public records. The public body  
10 may charge the victim its actual cost for making public records available as  
11 provided in ORS 192.440 [(4)] (5).

12 “(3) As used in this section:

13 “(a) ‘Criminal history’ means a description of the prior arrests, con-  
14 victions and sentences of the person.

15 “(b) ‘Future release’ means the projected or scheduled date of release of  
16 the person from confinement, the name and location of the correctional fa-  
17 cility from which the person is to be released and the community where the  
18 person is scheduled to reside upon release.

19 “(c) ‘Imprisonment’ means the name and location of the correctional fa-  
20 cility in which the person is confined.

21 “(d) ‘Public body’ has the meaning given that term in ORS 192.410.

22 **“SECTION 9.** ORS 802.183 is amended to read:

23 “802.183. (1) The Department of Transportation may establish fees rea-  
24 sonably calculated to reimburse it for its actual cost in making personal in-  
25 formation available to a person or government agency authorized under ORS  
26 802.179 to obtain the information. Fees established under this subsection are  
27 subject to the provisions of ORS 192.440 [(4) to (6)] (5) to (7).

28 “(2) The department may adopt rules specifying conditions that must be  
29 met by a person or government agency requesting personal information under  
30 ORS 802.179. Such conditions may include but need not be limited to:

- 1       “(a) Providing reasonable assurance of the identity of the requester;
- 2       “(b) Providing reasonable assurance of the uses to which the personal
- 3 information will be put, if applicable;
- 4       “(c) Showing that the individual whose personal information is to be
- 5 disclosed has given permission for the disclosure, if permission is required;
- 6 and
- 7       “(d) Submitting a written request for the personal information in a form
- 8 prescribed by the department.

9

10

### “CAPTIONS

11

12       “SECTION 10. The unit captions used in this 2016 Act are provided

13 only for the convenience of the reader and do not become part of the

14 statutory law of this state or express any legislative intent in the

15 enactment of this 2016 Act.

16

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### “EMERGENCY CLAUSE

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19       “SECTION 11. This 2016 Act being necessary for the immediate

20 preservation of the public peace, health and safety, an emergency is

21 declared to exist, and this 2016 Act takes effect on its passage.”.

22